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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RON ISSAC RICHARDSON,) No. C 07-3753 SI
Plaintiff,)
v.)
EMILIO T. GONZALEZ, Director of U.S.) DEFENDANTS' MOTION TO DISMISS
Department of Homeland Security;)
MICHAEL CHERTOFF, Secretary,) Date: November 30, 2007
Department of Homeland Security,) Time: 9:00 a.m.
Defendants.) Court: 10, 19th Floor

I. INTRODUCTION

Plaintiff Ron Issac Richardson (“Plaintiff”) asks the Court to enter an order directing Defendants to forward his approved visa petition to the National Visa Center. On September 21, 2007, the U.S. Citizenship and Immigration Services (“USCIS”) transmitted the petition at issue to the National Visa Center. Accordingly, the Complaint should be dismissed for mootness.

II. FACTS

On December 11, 2001, Plaintiff filed three immigrant visa petitions, Form I-130, with the USCIS California Service Center, on behalf of his wife and her children. Complaint, p. 3 ¶ 8. USCIS approved the petitions on July 15, 2003; however, the consular officer who interviewed

1 Plaintiff's wife was not satisfied that the marriage was genuine. Id., p. 3 ¶¶ 8, 9. On
 2 February 23, 2005, the Department of State returned the petition to USCIS for further review. Id.
 3 As set forth in the Complaint, USCIS reaffirmed the petitions on behalf of Plaintiff's step children,
 4 and returned them to the National Visa Center ("NVC") for consular review. Id., p. 3 ¶ 10.

5 In July 2006, USCIS notified Plaintiff of its intent to revoke the approved petition of his
 6 wife. Id., p. 4 ¶ 11. On November 8, 2006, USCIS reaffirmed its finding that the petition was
 7 properly approved, and sent the reaffirmed approval notice to the Department of State. Id. Plaintiff
 8 filed the instant Complaint on July 20, 2007. On September 17, 2007, USCIS again reaffirmed the
 9 petition, and on September 21, 2007, the U.S. Department of State's National Visa Center ("NVC")
 10 received the approved visa petition. See Declaration of Kurt G. Gooselaw ("Gooselaw Decl.").

11 III. ANALYSIS

12 Plaintiff asks the Court to enter an order compelling USCIS to forward the petition to the
 13 National Visa Center. However, USCIS has again transmitted the approved visa petition to the
 14 Department of State. Gooselaw Decl., p. 2 ¶ 2. Accordingly, Plaintiff's claim against USCIS is now
 15 moot. Spencer v. Kemna, 523 U.S. 1, 7 (1998) (stating a case is moot when it no longer presents
 16 a case or controversy under Article III, § 2 of the Constitution). There are no remaining issues to
 17 be litigated, and the Complaint should be dismissed.¹

18 IV. CONCLUSION

19 For the foregoing reasons, Defendants respectfully request the Court to grant summary
 20 judgment in their favor.

21 Dated: October 22, 2007

Respectfully submitted,

22 SCOTT N. SCHOOLS
 23 United States Attorney

24 _____/s/
 25 MELANIE L. PROCTOR
 26 Assistant United States Attorney
 Attorneys for Defendants

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 28 ¹Defendants note that Plaintiff asks for attorneys fees, and argue that because the case is
 moot, he is not a prevailing party such that he is entitled to fees. Defendants respectfully request
 the opportunity to fully brief that issue, if necessary.